

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

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PLR-105229-21

Date:
August 25, 2021

LEGEND

Acquiring =

Merger Sub =

Target =

Business A =

Business B =

Date 1 =

Shareholder X =

State A =

a =

b =

c =

d =

e =

Dear :

This letter responds to your authorized representatives' letter dated March 5, 2021, requesting rulings on certain federal income tax consequences of a completed transaction (the "Acquisition," as defined below). The information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

SUMMARY OF FACTS

Acquiring is a widely held, publicly traded corporation and is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the "Acquiring Group"). The Acquiring Group is engaged in Business A and has significant net operating loss carryforwards. As of the close of business on the day immediately preceding the Acquisition, Acquiring's capital stock consisted of a outstanding shares of its single class of common equity. There were no shares of Acquiring preferred stock outstanding.

Based on filings with the U.S. Securities and Exchange Commission ("SEC") for the period of time immediately before the Acquisition, the only shareholder (other than a direct public group) that Acquiring was aware of that owned five percent or more of its outstanding stock was Shareholder X, which owned b shares of Acquiring's outstanding stock. Acquiring determined that its remaining stock was owned by less than 5-percent shareholders within the meaning of section 382. Accordingly, for purposes of section 382, all the remaining stock of Acquiring was treated as being owned by one or more public groups (collectively, the "Acquiring Public Groups").

Prior to the Acquisition, Target was a widely held, publicly traded corporation and was the common parent of an affiliated group of corporations that filed a consolidated U.S. federal income tax return (the "Target Group"). The Target Group is engaged in Business B, which is in the same industry as Business A. Target's capital stock consisted of a single class of common equity. As of the close of business on day immediately preceding the Acquisition, Target determined that it did not have any 5-percent shareholders within the meaning of section 382. Accordingly, for purposes of section 382, all of Target's stock is treated as being owned by one or more public groups (collectively, the "Target Public Groups").

ACQUISITION

In anticipation of the Acquisition, Acquiring formed Merger Sub. On Date 1, pursuant to an Agreement and Plan of Merger among Acquiring, Target, and Merger Sub (the “Merger Agreement”), Merger Sub merged with and into Target pursuant to State A law (the “Acquisition”), with Target surviving. As a result of the Acquisition, Target became a direct, wholly owned subsidiary of Acquiring. Under the Merger Agreement, each share of Target common stock outstanding immediately prior to the effective time of the Acquisition (other than Target restricted shares, any shares of Target common stock owned directly or indirectly by Target, Acquiring, or Merger Sub (in each case, not held on behalf of third parties), which were all canceled upon completion of the Acquisition) was converted into the right to receive c shares of Acquiring common stock. Immediately after the Acquisition, shareholders of Acquiring continued to own approximately d percent of Acquiring’s outstanding common stock, while former shareholders of Target owned the remaining e percent of the Acquiring’s outstanding common stock.

Acquiring’s management understands that certain shareholders, each of which held less than 5 percent of the stock of Acquiring, also owned less than 5 percent of the stock of Target (the “Overlapping Public Group”). Management’s understanding is founded on the fact that Acquiring and Target are in related industries, and so their stock was likely held by several of the same market-segment funds with an industry investment strategy. Acquiring has developed a list of shareholders that are potentially included in the Overlapping Public Group. Such shareholders have been identified through inquiries with the investor relations department at Acquiring and a review of applicable public filings with the SEC (including, for example, Form 13Fs). Having determined a list of the potential Overlapping Public Group shareholders, Acquiring has sent written requests for information (the “Written Questionnaires”) regarding such overlapping ownership to confirm the number of shares of each of Acquiring and Target stock that members of the Overlapping Public Group economically owned immediately before the Acquisition. Acquiring may also engage in follow-up correspondence with shareholders to confirm and clarify responses to the Written Questionnaires, as necessary. Such follow-up correspondence may be in either written, digital, or telephonic form.

REPRESENTATIONS

Acquiring makes the following representations with respect to the Acquisition:

- 1) Acquiring is a loss corporation as defined in section 382(k)(1).
- 2) Acquiring’s only class of outstanding stock during the relevant testing period is its common stock described herein.

- 3) Acquiring has no other outstanding interests or obligations that would be treated as stock for purposes of section 382.
- 4) Acquiring has no actual knowledge regarding the members of the Overlapping Public Group other than the knowledge obtained through: (a) the corporate records of Acquiring and Target; (b) a survey of the relevant SEC filings to determine whether Acquiring and Target had any 5-percent shareholders; and (c) additional information that will be obtained through the Written Questionnaires.
- 5) The Acquisition qualified as a tax-free reorganization within the meaning of section 368(a) that is an equity structure shift that also is described in section 381(a)(2) and in which Acquiring is a party to the reorganization.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

- 1) The additional information regarding the stock ownership of the Overlapping Public Group obtained by Acquiring through public documents and responses to the Written Questionnaires (including any follow-up communications) is an acceptable method of determining actual knowledge within the meaning of Treas. Reg. § 1.382-2T(k)(2) (the “Actual Knowledge”).
- 2) For purposes of determining the amount of the owner shift of Acquiring from the Acquisition (including whether such owner shift results in an ownership change) and the amount of any subsequent owner shifts of Acquiring, Acquiring is permitted to use the Actual Knowledge to treat the Overlapping Public Group as an additional direct public group of Acquiring for purposes of applying the segregation rules of Treas. Reg. § 1.382-2T(j)(2), and the presumption described in Treas. Reg. § 1.382-2T(j)(2)(iii)(B)(1) will not apply.
- 3) For purposes of section 382, the increase in the Overlapping Public Group’s percentage ownership of Acquiring as a result of the Acquisition will be equal to the amount by which its percentage ownership of Acquiring immediately after the Acquisition exceeds its percentage ownership of Acquiring immediately before the Acquisition.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Acquisition under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Acquisition that is not specifically addressed by this letter.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number (PLR-105229-21) of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: